

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 EA-10 NEA-10 IO-13 ISO-00 FEA-01
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 FRB-03
H-01 INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05
PA-01 AID-05 SS-15 STR-05 ITC-01 TRSE-00 USIA-06
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FM USMISSION GENEVA
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INFO AMEMBASSY BANGKOK
AMEMBASSY BRUSSELS
AMEMBASSY COLOMBO
AMEMBASSY DACCA
AMEMBASSY MANILA
AMEMBASSY NEW DELHI
AMEMBASSY SEOUL
AMEMBASSY TOKYO
AMEMBASSY VIENTIANE

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BRUSSELS FOR USEC

PASS STR ELECTRONICALLY FOR STEWART

EO 11652: N/A
TAGS: ETRD, GATT, ESCAP
SUBJ: GATT: BANGKOK AGREEMENT

REF: (A) STATE 239310, (B) NEW DELHI 14675

1. WE HAVE DISCUSSED BANGKOK AGREEMENT WITH A NUMBER OF
DELEGATIONS AND THE GATT SECRETARIAT.

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2. ACCORDING TO OUR SOURCES, SEVERAL OF THE PARTIES TO THE
AGREEMENT, PARTICULARLY INDIA AND SRI LANKA ARE NOT ADVERSE
TO ASKING FOR A GATT WAIVER. DECISION OF BANGKOK GROUPO NOT
TO ASK FOR WAIVER BUT TO JUSTIFY ACTION UNDER PART IV WAS
TAKEN AT ADVICE OF UNCTAD OBSERVER WHO ASSISTED IN DRAFTING
REPLIES TO GATT QUESTIONNAIRE. LDC'S, OFTEN QUOTING
OBJECTIVES OF PART IV, HAVE BEEN HIGHLY CRITICAL OF NEED TO

SEEK WAIVERS FOR NUMBER OF LDC-ORIENTED PROGRAMS SUCH AS GSP AND THE PROTOCOL OF 16. AS SEVERAL LDC PROPOSALS IN THE MTN AND OTHER GATT FORA (CTD) SUGGEST, THEY WOULD LIKE TO HAVE A GENERAL CARTE BLANCHE FOR IMPLEMENTING SUCH ARRANGEMENTS. DECISION NOT TO SEEK A WAIVER IN THIS INSTANCE MAY BE ANOTHER ATTEMPT TO INSTITUTE THIS PRINCIPLE WITHOUT FORMAL CP DECISION.

3. AT OUR URGING, GATT SECRETARIAT SPOKE WITH BANGLADESH DEL WHO WILL BE SPOKESMAN FOR THE BANGKOK GROUP (AND WHO, UNFORTUNATELY, IS THE MOST IDEOLOGICAL OF THE GROUP) POINTING OUT TO HIM THAT WAIVER IS LOGICAL PROCEDURE TO FOLLOW IN VIEW OF CRITICAL ATTITUDES OF A NUMBER OF GATT MEMBERS. BANGLADESH DEL WAS NONCOMMITTAL BUT SAID HE WOULD THINK IT OVER.

4. CANDIAN AND EC DELS ARE BOTH CRITICAL OF THE AGREEMENT. ALTHOUGH NEITHER HAS INSTRUCTIONS THEY BELIEVE THAT BANGKOK AGREEMENT SHOULD NOT BE BLESSED BY WORKING PARTY AND THAT WAIVER PROCEDURE SHOULD BE USED. EC DEL SEES AGREEMENT GOING BEYOND USUAL PREFERENTIAL ARRANGEMENT IN THAT IT BINDS PREFERENCE MARGINS AND ALLOWS PREFERENTIAL TREATMENT IN THE NTM AREA, WHICH HE ASSUMES ALSO MEANS PREFERENTIAL TREATMENT IN GOVERNMENT PROCUREMENT. CANADIAN DEL POINTS OUT THAT PRODUCT COVERAGE IS MINIMAL BUT SEES PRECEDENTIAL IMPLICATIONS OF JUSTIFICATION UNDER PART IV. JAPANESE DEL LIMITED OFFICIAL USE

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EXPECTS THAT HE WILL BE INSTRUCTED TO EXPRESS SYMPATHY WITH OBJECTIVES OF THE AGREEMENT BUT QUESTION COMPATIBILITY WITH SPECIFIC GATT ARTICLES IN LOW-KEY MANNER SIMILAR TO JAPANESE POSITION IN WP ON AUSTRALIA AND PAPUA-NEW GUINEA AND EC-MAGHREB ARRANGEMENTS.

5. INDIA MINCOMMERCE SECRETARY (REF B) IS PARTIALLY CORRECT IN STATING THAT INDIAN-YUGO-EGYPT TRIPARTITE AGREEMENT WAS ALLOWED WITHOUT THE USUAL WAIVER BUT HE EXAGGERATES WHEN HE SAID IT WAS WITHOUT DIFFICULTY. IN THAT INSTANCE, THE CONTRACTING PARTIES TOOK A DECISION (AT THE RECOMMENDATION OF THE WP) ALLOWING THE AGREEMENT TO OPERATE "NOTWITHSTANDING THE PROVISIONS OF ARTICLE I" FOR A LIMITED DURATION SUBJECT TO CERTAIN CONDITIONS. THESE INCLUDED: AGREEMENT TO CONSULT, REPORTING PROCEDURES AND ANNUAL REVIEW OF THE AGREEMENT. IN ADDITION, THE MEMBERS OF THE AGREEMENT AGREED TO SEEK THE EXTENSION OF THE CONCESSIONS IN THE AGREEMENT TO ALL DEVELOPING COUNTRIES, PARTICULARLY TO THOSE MEMBERS OF THE PROTOCOL OF 16. ALTHOUGH NOT TECHNICALLY A WAIVER UNDER ARTICLE XXV, THE STIPULATED CONDITIONS ARE SIMILAR TO THOSE IN MOST WAIVERS AND THE US STATED (BISD 16, P. 88) THAT WE CONSIDERED THE

DECISION TO MEET THE REQUIREMENTS OF ARTICLE XXV:5.

COMMENT: WE CAN PROBABLY COUNT ON CANADA TO BE CRITICAL OF THE AGREEMENT IN THE WP. JAPAN AND PERHAPS NORDICS MAY QUESTION GATT LEGALITY BUT IN LOW-KEY MANNER. ALTHOUGH EC DEL IS CRITICAL OF AGREEMENT, WE DON'T KNOW TO WHAT EXTENT HIS INSTRUCTIONS WILL REFLECT THIS AS EC PREFERENTIAL ARRANGEMENTS MAY ACT AS INHIBITING FACTOR. (EC WAS SILENT IN WP ON AUSTRALIAN-PAPUA NEW GUINEA ARRANGEMENT). WE DOUBT THE BANGKOK COUNTRIES WILL BE WILLING BEFORE THE MEETING TO INDICATE THAT THEY WILL ASK FOR A WAIVER, BUT, GIVEN THE APPARENT REASONABLENESS ON THE PART OF SOME MEMBERS, WE MAY BE ABLE TO OBTAIN AGREEMENT FOR WP TO RECOMMEND A WAIVER.

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6. WE THEREFORE RECOMMEND THAT WE ATTEMPT, IN NEXT FEW WEEKS, TO DEVELOP SUPPORT AMONG KEY DELS FOR A CRITICAL WP APPRAISAL OF THE AGREEMENT (ALTHOUGH WP REPORT LIKE ALL SUCH REPORTS WILL BE SPLIT) AND TO CONDITION PARTIES TO BANGKOK AGREEMENT TO IDEA THAT WAIVER IS BEST SOLUTION IN PREVAILING CIRCUMSTANCES. IF QUESTION OF WAIVER BECOMES ONE OF PRINCIPLE FOR MEMBERS OF BANGKOK AGREEMENT WE MAY WISH TO CONSIDER THE SCENARIO FOLLOWED IN CP'S DECISION ON TRIPARTITE ARRANGEMENT AS AN ALTERNATIVE SOLUTION. VANDEN HEUVEL

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